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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,364	08/19/2008	Murali Jasty	49931-0152	9891
61263	7590	02/19/2010	EXAMINER	
PROSKAUER ROSE LLP			SCHILLINGER, ANN M	
One International Place				
Boston, MA 02110			ART UNIT	PAPER NUMBER
			3774	
			MAIL DATE	DELIVERY MODE
			02/19/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/597,364	JASTY, MURALI	
	<b>Examiner</b>	<b>Art Unit</b>	
	ANN SCHILLINGER	3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 August 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-26 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>8/19/08, 8/20/08</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

Ann, you have 112, 2<sup>nd</sup> pp rejections to make concerning some of the claims. I have provided some examples of 112 deficiencies. Claim 2 as worded appears to be indefinite. Claim 7, what is meant by “internal and external” rotation. Claim 8, there is no antecedent support for “the main coronal plane”. Claim 14, there is no support for “the anterior-posterior aspects” What is meant by “downward sweep”. Claim 18 is “the flexion” the same as “early flexion”?

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Ann, this rejection is a “shotgun” type rejection. You fail to specifically treat each limitation of each claim. Mere statement of see figures 4-6D and columns 4 and 5 are in itself not sufficient. Please take the time to

**treat each limitation. I do not notice any differences in your treatment of the product claims and the method claims.**

Claims 1-11 and 13-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Dennis et al. (US Pat. No. 6,325,828). Dennis et al. discloses the following of claim 1: a knee replacement prosthesis comprises: (a) a femoral component (10) having a pair of condylar surfaces (14) and an intercondylar region (16, 20); and (b) a tibial component (30) having a tibial platform (Fig. 4) and a bearing component (32) which articulate with the femoral component, wherein a protrusion or a tibial post (34) from the bearing component articulates with the intercondylar portion of the femoral component, wherein the tibial post is substantially curved in the sagittal plane to allow anterior- posterior translation of the femoral component during extension and early flexion, wherein anterior and posterior surfaces of the post is curved to allow and control femoral-tibial axial rotation (Figs. 4-6D).

Dennis et al. discloses claims 2-8, 10, 11, 13-22, and 24-26, in Figures 4-6D and in col. 4, line 58 through col. 5, line 25.

Dennis et al. discloses claim 9 in col. 3, lines 10-35.

Dennis et al. teaches the following of claim 23: a knee replacement prosthesis of claim 1, wherein a central projection (42) of the tibial component articulate with distal intercondylar surface of the femoral component or an intercondylar cam.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dennis et al.

Dennis et al. discloses the claimed invention except for the post having a variable radius of curvature of less than about 10 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the post of Dennis et al. with a variable radius of curvature of less than about 10 mm, **I looked at claim 12 and I think it may be indefinite. To what feature is the numerical value of 10mm directed? Is applicant attempting to claim the curvature or the degree of variance?** since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./  
Examiner, Art Unit 3774